

AFFIDAVIT

I, Caitlin Moynihan, having been first duly sworn, do hereby depose and state as follows:

1. I am a Special Agent with Homeland Security Investigations (HSI). HSI is a directorate within Immigration and Customs Enforcement (ICE). ICE is a subordinate component of the Department of Homeland Security (DHS) and the successor to many of the law enforcement powers of the former Immigration and Naturalization Service and the former U.S. Customs Service. I have been a Special Agent since October 2009. I graduated from the Federal Law Enforcement Training Center in April 2010. I am currently assigned to the Burlington, Vermont Resident Agent in Charge Office. I hold a Bachelor of Arts degree in sociology from Providence College. I have participated in numerous investigations involving the use of peer-to-peer file sharing and child pornography/child exploitation investigations.

2. As a Special Agent, I am an investigative or law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510(7). I am empowered to conduct investigations of and to make arrest for offenses involving the sexual exploitation of children enumerated in Title 18, United States Code, Section 2251 et seq., and for other felony offenses.

3. As a Special Agent, I know that Title 18, United States Code, Section 2422(b) prohibits a person from using a facility of interstate commerce to knowingly persuade, induce, entice, or coerce any individual who is not 18 years old to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense.

4. I submit this affidavit in support of a criminal complaint charging Brian TIERNEY with using a facility of interstate commerce to attempt to entice a minor to engage in

prostitution or any sexual activity for which a person can be charged with a criminal offense, in violation of Title 18, United States Code, Section 2422(b).

5. I have not included each and every fact known to me concerning this investigation. I have set forth only those facts which I believe are necessary to establish probable cause to believe that TIERNEY committed the foregoing offense.

6. The statements contained in this affidavit are based upon my investigation, information provided by other law enforcement officers and witnesses, and on my experience and training as a Special Agent.

#### **PROBABLE CAUSE**

7. On September 10th, 2017, I participated in an undercover operation designed to identify persons using online social networks, ecommerce, and dating sites to lure children to engage in sexual acts.

8. As part of the undercover operation, an Undercover Vermont Internet Crimes Against Children Task Force (VT-ICAC) Agent posed as a 14 year old female who lives in Chittenden County using online social networks, ecommerce, and/or dating sites.

9. As set forth below, someone I have determined that Brian TIERNEY posted an ad on Craigslist that said the following, Title: "Daddy Is Home...! – m4w (Burlington Area)", [male for woman] ad posting: "Oh, Princess, I know you have been reading those dirty CL posts again. Have you been having dirty thoughts? Tingling down there in your private parts? I know it's fun to play on the computer, but that does not mean it's OK to play with yourself as you read dirty, dirty things online. What a bad little girl you have been today. You know that when you are good you get rewarded in all kinds of ways, but we've been over this again and again. I am afraid this

time you are going to need to be punished. Pull down your panties and bend over my knee, princess. If you have something to say for yourself before I start spanking your little ass, send me a note with the words: "I'm sorry Daddy" in the subject line."

10. On September 9, 2017, the Undercover VT-ICAC Agent (UC) replied to the ad referenced above placed on Craigslist.

a. The Undercover VT-ICAC Agent stated the following: "hey saw your post....i consider myself a princess lol...but im prob a little younger then what ur looking for :-)"

b. TIERNEY replied on September 9, 2017 saying "Hi there Princess! Thanks for the reply. May I ask how young? I don't mind if you are younger at all..." TIERNEY then said "Of consenting age of course..." to which the UC replied, "im 14...is that ok...u seem nice". TIERNEY then said "May I see a picture? I am pretty sure 14 is not OK..." The UC replied, "well it's up to u, that's why i told u...but here's a pic...will i get 1 of u in return lol" The UC sent a photograph of herself when she was a child.

c. TIERNEY replied and said: "Looks like an older picture. As tempting as it may be in a naughty and very wrong way... It is just not right! You are way too young. If you need to experiment, do it on yourself for now. You will be proud of yourself later in life if you wait until you fall in love to give yourself up. If you absolutely must, there must be boys your age who ask you out..." The UC replied, "The pic is from a few months ago....boys my age pretty much suck...sum ask me out but not really interested." TIERNEY then stated, "I am sure they do! Again, very tempting, but so illegal..." to which the UC responded, "well it was nice chatting for a few anyway...hope u find what ur looking 4"

d. TIERNEY continued to email the UC and asked what the UC wanted to do

and how the UC would get out. The UC stated, "tbh not entirely sure what would want to do...pretty inexperienced, but open...mom is gone for night so i can do/go wherev." TIERNEY then asked the UC how long her mom left her alone for and where she was located. TIERNEY continued communicating with the UC and stated that it wasn't ok for her to be alone for so long and that he felt like that he should come get her. TIERNEY also asked if the UC wanted to sleep on his couch. The UC asked TIERNEY what his real motivation was to which he replied, "Half concerned, half dirty."

e. The conversation continued and TIERNEY stated that if he was going to pick up the UC that it needed to be soon. When the UC asked TIERNEY if he was close, he replied, "Colchester. Need to know now, need to get my 3 year old in bed soon..." The UC responded, "Like what time? And im not very experienced...nervous but excited...when u say both, what r u thinkin we will do?" and then also sent another email saying, "like u mean after he's in bed, or what im confused." TIERNEY replied, "I would need to get you now. Any experience? Not thinking anything specific." TIERNEY immediately sent another email to the UC saying, "Or tomorrow?"

f. The conversation between TIERNEY and the UC continued and TIERNEY said, "I would need to assume nothing would happen. But if you had your way, what would you want?" The UC replied, "i dont really kno wat i would want...i havent done much before so wouldnt know wat to say."

g. The UC asked TIERNEY, "wats good to start with" and TIERNEY replied, "If that is your experience, not much more. Maybe some touching and some oral. No more." The UC said, "ive always wondered wat thats like" to which TIERNEY responded, "It's

nice if done right. Are you affiliated with police in any way?" The UC then said, "no lol im only 14". TIERNEY then replied, "If I could get you now, I would, but can't leave now..."

11. This conversation went on between September 9, 2017, and September 10, 2017. TIERNEY asked the UC if she had Kik or Skype and stated that he wanted to see her.

12. At one point in the conversation, TIERNEY said to the UC, "Maybe you could "babysit my daughter" tomorrow afternoon..."

13. On September 10, 2017, TIERNEY said, "I am still intrigued, but very nervous! When does your mom get home?" to which the UC replied, "shes supposed to leave boston after dinner tonight...so prob home around midnight...she'll text me when she leaves usually."

a. TIERNEY said "Tell me what you are really thinking..." to which the UC replied, "wat do u mean wat im really thinking? im assuming since you said it would be "babysitting" that it really wouldnt be lol". TIERNEY asked, "Have you ever actually done real babysitting?" and in a subsequent email asked, "What do you really expect or would you like? I hope you understand why I am nervouus..." The UC responded, "i have done real babysitting lol not "babysitting"...i get why ur nervous, im nervous too...id like whatever u do, it's just hard to put in words im so inexperienced."

b. TIERNEY stated to the UC, "If anyone were ever to ask you were bsbysitting...You never told me what part of south burl you are in..."

14. TIERNEY also sent a picture to the undercover agent during one of his chats, and once taken into custody, it was confirmed that TIERNEY was the same male in the picture sent to the online persona.

15. TIERNEY agreed to meet the 14 year old female undercover persona at a

predetermined location within Chittenden County. TIERNEY did not provide a description of his vehicle; however, TIERNEY had previously sent a photograph of himself via Craigslist email to the undercover agent.

16. While surveillance units were in the area of the predetermined meet location, a black Honda Accord with tinted rear windows was observed multiple times driving around the area. Surveillance units noted that the license on this vehicle as follows: VT tag: GRM408. It should be noted that while surveillance units observed this vehicle in the area of the predetermined meeting location, the UC was still receiving emails from TIERNEY.

17. Record checks indicated that this vehicle was registered to: Brian TIERNEY at 197 Lupine Drive in Colchester, Vermont. A driver's license photograph of TIERNEY was obtained from the Vermont Fusion Center.

18. I observed the photograph that the individual communicating with the undercover agent had previously sent via email. I determined that the individual in the photograph sent to the undercover agent match the individual in the DMV photograph obtained of TIERNEY.

19. Surveillance units followed the Honda Accord bearing Vermont tag: GRM408 and executed a traffic stop on Kennedy Drive in South Burlington, Vermont. It was determined that TIERNEY was the operator of the vehicle and he was accompanied by his 3 year old daughter in the vehicle.

20. Following TIERNEY's arrest a Samsung Galaxy S8 was in plain view in the front of the vehicle. The Samsung Galaxy S8 was secured for evidentiary purposes.

21. In securing the Samsung Galaxy S8, the notifications screen was open and

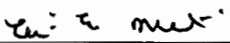
evidence of the email conversation with the undercover agent was visible; the subject line being: "Re: Daddy is home...!" This notification screen was photographed by law enforcement.

22. After he was taken into custody, law enforcement informed him of his Miranda rights. TIERNEY advised that he did not wish to speak with us. The conversation was video and audio recorded.


23. Based on my training and experience, I know that a cellular telephone is a facility of interstate commerce because, among other things, it necessarily accesses nationwide networks to make cellular telephone calls and to send text messages.

24. Based on the foregoing, I believe that there is probable cause to believe that Brian TIERNEY committed the offense of using a facility of interstate commerce to knowingly persuade, induce, entice, or coerce any individual who is not 18 years old to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, in violation of 18 U.S.C. § 2422(b).

Dated at Burlington, Vermont this 11<sup>th</sup> day of September, 2017.

  
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CAITLIN MOYNIHAN  
Special Agent  
Homeland Security Investigations

Subscribed and sworn to before me this 11<sup>th</sup> day of September, 2017.

  
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HON. JOHN M. CONROY  
United States Magistrate Judge